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CENTRAL REEXAMINATION UNIT

Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

In re Application of	:	
Karim Esmailzadeh	:	DECISION
Application No. 09/967,306	:	TERMINATING
Filed: September 28, 2001	:	REISSUE PROCEEDING
Practitioner Docket No.: 33208.5	:	

This is a decision terminating the instant reissue proceeding by default based on (1) the expiration of U.S. patent 6,170,514, for which patent the present application requests reissue, and (2) the failure of applicant to respond to the Order to Show Cause mailed by the Office April 9, 2009.

BACKGROUND

1. Reissue application No. 09/967,306 ("the '306 reissue application") was filed on September 28, 2001, for reissue of U.S. Patent No. 6,170,514 ("the '514 patent") issued January 9, 2001.
2. The Image File Wrapper record for the '306 reissue application reveals that a paper titled "Response To Office Communication" was filed on October 1, 2007.
3. The Office's financial records reveal that the 7.5 year maintenance fee due by January 9, 2009 (the end of the maintenance fee grace period), was not paid.
4. The '514 patent expired at midnight on January 9, 2009, for failure to pay the 7.5 year maintenance fee that was due.¹ See: 1340 OG 6, 13 at <http://www.uspto.gov/web/offices/com/sol/og/2009/week09/TOC.htm#ref3>.
5. On April 9, 2009, an Order to Show Cause was mailed to applicant, setting a 30-day period for a response showing sufficient cause why the Office should not terminate the present reissue proceeding. The Order makes clear that a failure by applicant to respond to the show cause order within the set 30-day period will result in the termination of the present reissue proceeding by default.

¹ See: MPEP § 2506, third paragraph.

6. No response to the April 9, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired.

DECISION

As pointed out above, no response to the April 9, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired. In addition, there is no record of any filed petition addressing the failure to pay the 7.5 year maintenance fee, as would be required in order to reinstate the '514 patent.


When a patent has expired, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393][Emphasis added.]

Since the '514 patent expired for failure to pay the requisite maintenance fee, and applicant has not provided any information to the contrary after being afforded an opportunity to do so, the instant reissue application is hereby terminated. Accordingly, the Technology Center is to proceed to hold the reissue application to be an abandoned application, and process the application accordingly.

CONCLUSION

1. The present reissue application is hereby terminated.
2. Jurisdiction over the reissue application file is being forwarded to Technology Center Art Unit 3753 for processing the application as an abandoned application.
3. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.


Kenneth M. Schor
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